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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,854	09/04/2003	Steven E. Lentsch	163.1453USII	8585
23552	7590	09/21/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			HARDEE, JOHN R	
			ART UNIT	PAPER NUMBER
			1751	
DATE MAILED: 09/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/656,854	Applicant(s) LENTSCH ET AL.	
	Examiner John R. Hardee	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
 4a) Of the above claim(s) 6-8, 12-15, 17, 28-41, 50-53 and 56-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9-11, 16, 18, 22, 23, 25-27, 42-49, 53-55, 60, 61, 65, 66 and 68-70 is/are rejected.
- 7) ☒ Claim(s) 19-21, 24, 62-64 and 67 is/are objected to.
- 8) ☒ Claim(s) 1-70 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>(4)</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. Applicant has submitted approximately 100 references for the examiner's consideration in the 4 Information Disclosure Statements. Of these, numerous references, such as US 5,082,692 US 6,006,472 and US 4,308,159 do not appear at all pertinent to the instant claims. It is unclear why these were cited because they do not appear to be "material to patentability" of the claimed invention (37 CFR 1.56). In addition, there are a number of duplicate entries, which are confusing and time consuming to consider.

MPEP 2004, particularly paragraph (13), sets forth guidelines to aid applicants in their duty of disclosure. In this section it is stated:

"It is desirable to avoid submission of long lists of documents if it can be avoided. Eliminate clearly irrelevant or marginally pertinent cumulative information. If a long list is submitted, highlight those documents, which have been specifically brought to the applicant's attention and/or are known to be of most significance. See *Penn Yan Boats, Inc., v. Sea Lark Boats, Inc.*, 359 F. Supp. 948, 175 USPQ 260 (S.D. Fla. 1972), *aff'd*, 479 2d 1388, 178 USPQ 577 (5th Cir. 1973), *cert. denied* 414 U.S. 874 (1974)."

The examiner requests that applicant provide a list of the 3-5 most pertinent references and their relevance to the presently claimed invention.

Election/Restrictions

2. Claims 6-8, 12-15, 17, 28-40, 50-53, 56-59 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected

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composition, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 8, 2005.

3. Search has not been extended beyond the elected combination, as it was found not to be allowable.
4. Note that claims 6, 41, 50 and 51 do not read on the elected combination.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor

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and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-5, 9-11, 16, 18, 22, 23, 25, 26, 27, 42-49, 53-55, 60, 61, 65, 66, 68-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lam et al., US 5,480,567 in view of Lin et al., US 5,300,238. Lam discloses surfactant mixtures for fabric conditioning compositions which are coated onto a tumble dryer article. Preferred embodiments include compositions comprising ethylene bis-stearamide, glycerol monostearate, stearic acid or a quaternary ammonium compound known in the art (col. 3, lines 16+). Incorporation of methyl bis tallow amidoethyl 2-hydroxyethyl ammonium methyl sulfate is not disclosed. Lin teaches that methyl bis(tallow amidoethyl 2-hydroxyethyl ammonium methyl sulfate is a useful softener to incorporate into tumble dryer articles (col. 6, lines 19-21). It would have been obvious at the time that the invention was made to incorporate methyl bis(tallow amidoethyl 2-hydroxyethyl ammonium methyl sulfate into the dryer sheet compositions of Lam et al., because Lam discloses that known quats may be added, and Lin teaches that this is a useful quat for the same purpose. Claim 18 recites a limitation commonly found in a dryer sheet. Regarding claim 25, while there is no teaching to compel formulation of a composition with such a melting point, such could be realized while working within the teachings of the reference. Regarding claims 26, 27, 42 and 44, these would appear to be a physical property of the elected composition. Alternatively,

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the claims do not read on the elected composition. Claim 45 appears to recite a physical property of the composition; alternatively, it reads on a single-use substrate being exhausted in the course of drying.

Allowable Subject Matter

9. Claims 19-21, 24, 62-64 and 67 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and if the claims were limited to recite the limitations of the elected composition.

10. The following is a statement of reasons for the indication of allowable subject matter: The closest prior art of record is the references relied upon above. The Lam reference is drawn to coating fabric softener on a substrate for deliver during drying. While such a substrate can be adapted for multiple uses, the reference does not motivate formulation of a block, ball or tablet, nor the attachment of the composition to a dryer.

11. Any prior art made of record and not relied upon is of interest and is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-

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1316.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", with a stylized, cursive script.

John R. Hardee
Primary Examiner
September 2, 2005